

From: [McCormack, Craig \(ECY\)](#)
To: Kissinger.Ion@Epamail.epa.gov
Subject: FW: FC Rate info-regional approach
Date: Saturday, November 03, 2012 9:02:05 AM

Note emphasis on mtg with EPA R-10 as gov't to gov't interactions

From: seiter, Ann [mailto:aseiter@nwifc.org]
Sent: Friday, November 02, 2012 11:55 AM
To: McCormack, Craig (ECY)
Cc: Dianne Barton
Subject: Re: FC Rate info-regional approach

Thank you Craig. Tribal leaders are continuing to discuss adoption of a more protective rate with EPA, as well as communicating with the gubernatorial candidates. Tribes have indicated their hope that the FCR and standards processes will get back on track after the elections. As you know, many tribes have written to Ecology and EPA about their concerns related to the WQ policy forum and have requested government to government discussions instead. I do not think a regional rate is likely to be adopted by EPA anytime soon. My understanding is that EPA very much wants to respect the states' efforts, but recognizes tribal concerns. I expect that a more government level approach will be a subject the next time the tribes meet with EPA.

Ann

On Thu, Nov 1, 2012 at 9:08 AM, McCormack, Craig (ECY) <cmcc461@ecy.wa.gov> wrote:
Ann & Dianne: below is an article you may already be aware of, I was wondering what traction with EPA R-10, if any, the tribes have had to a Pacific NW regional approach to adopting a FC Rate to establish water quality and sediment management standards?
Thanks/regards/Craig

FISH CONSUMPTION RATE, WATER QUALITY STANDARDS: SHOULD IDAHO, WASHINGTON FOLLOW OREGON'S LEAD?

Posted on Thursday, September 27, 2012 (PST)

The U.S. Environmental Protection Agency has rejected Idaho's new and revised human health water criteria for toxic pollutants, notifying the state's Department of Environmental Quality that it must use a higher fish consumption rate in determining new standards required by the Clean Water Act.

Meanwhile, tribal leaders attending the annual conference of the Affiliated Tribes of Northwest Indians in Pendleton on Thursday passed a resolution asking EPA to take a "regional approach" that would set Washington and Idaho in line with stricter rules established in 2011 by the state of Oregon. Oregon has the highest fish consumption rate in the United States.

Under the Clean Water Act, states are required to establish water quality standards and submit them to EPA for approval or disapproval. Likewise, revisions to a state's water quality standards also must be submitted to EPA for approval or disapproval.

The fish consumption rate is a factor used by states to establish water quality standards, which set out the amount of pollutants allowed to be discharged into a state's waterways. Increasing the fish consumption rate results in stricter limitations on pollutant discharges by industry and municipalities.

Although the decision has only recently surfaced, EPA in May "...disapproved Idaho's revised human health criteria for 88 toxic pollutants applicable to all surface waters" in the state.

In a May letter to Barry Burnell, Idaho's Water Quality Programs administrator, EPA's Michael Bussell, director of the Office of Water and Watersheds, said the CWA requires that the state address the federal decision in a timely manner. EPA has consistently told states that they must make progress on revising water quality standards or it will step in to establish the new rules.

"The EPA prefers that Idaho address this disapproval under its regulatory development process. However, if the state does not adopt necessary changes, the EPA will promptly propose and promulgate appropriate human health criteria for Idaho," Bussell wrote. Bussell said Idaho did not consider several sources of information before submitting water quality standards that used the national default fish consumption rate of 17.5 grams per day (about the amount of fish that would sit on a saltine cracker).

EPA suggested Idaho use available and relevant information on fish consumption, including the Columbia River Inter-Tribal Fish Commission survey, which Bussell described as "a well-designed survey ... directly applicable to a population of people – i.e., the Nez Perce Tribe – fishing in state waters."

EPA told Idaho it should evaluate how its revised human health criteria will protect other fish eaters because studies have shown that in addition to tribal subsistence fishers, recreational anglers in Idaho also consume fish at rates higher than the national default rate.

Tribal leaders advocated for the "regional approach" to a Northwest fish consumption rate so that Washington and Idaho, and ultimately Alaska, would provide the same human health protections in the Columbia River Basin.

It is not the first time such a regional approach has been mentioned. In August of 2005, Ronald A. Kreizenbeck, then acting administrator for EPA's Region 10, outlined a plan that would "provide joint leadership in human health protection and toxics reduction in the Northwest" and "establish a regional and national model for use in guiding similar efforts."

In his letter to state and tribal officials, Kreizenbeck said a higher fish consumption rate "may be appropriate for some waters in Oregon, Idaho and Washington" to "increase protection provided to subsistence fishing practices."

Further, Kreizenbeck said EPA would work with the states of Washington, Idaho and Alaska to encourage regional consistency on water quality standards of toxics.

"Defining appropriate fish consumption rates are critical to rendering water quality standards decisions that ensure adequate human health protection," Kreizenbeck wrote. "For shared waters such as the Columbia River, a regional approach will provide more opportunities for cross-boundary toxics reduction efforts."

Speaking to tribal leaders Wednesday in Pendleton, Dennis McLerran, administrator for EPA Region 10, said Idaho and Washington should follow the lead of Oregon.

In 2006, the Umatilla Tribes asked the Oregon Department of Environmental Quality to use a higher fish consumption rate based on studies that outlined health risks and the amount of fish eaten by Native Americans, as well as by Asian populations, and recreational anglers.

Over four years, the Umatilla Tribes, the Oregon DEQ and EPA, with industry, local governments, non-governmental organizations and local groups met to develop the new criteria with the intention of lowering the allowable amount of pollutants released to Oregon's waters while, at the same time, considering variances and other actions that would provide affordable options to those that discharge those pollutants.

EPA in October of 2011 approved a new fish consumption rate in Oregon of 175 grams – 10 times higher than EPA’s national default rate of 17.5 grams per day. (At one time Oregon had a default rate of 6.5 grams per day, and many states still do.)

A rate of 175 grams per day (about 24 eight-ounce meals a month) is the amount of fish that, under EPA guidelines, could be eaten without risking the health of consumers.

McLerran told tribal leaders that higher fish consumption rates in Idaho and Washington will require some heavy lifting.

McLerran said Northwest tribes should “stand together” to encourage Washington and Idaho to increase their fish consumption rates. While EPA is prepared to “step in” if states do not make progress, defining that progress can be tricky.

“It’s a bit of a dance,” McLerran said. “It took Oregon multiple years to finish.”

Leaders from two Washington tribes told McLerran that they would not be involved in a process driven by stakeholders, demanding instead to deal with the state on a government-to-government basis.

“I get you guys are mad,” McLerran said, suggesting that state and tribal staffs might be able to work through some issues.

“My fear is that if you are not there in the process then it won’t reflect your point of view,” McLerran said. “The process will suffer if you are not there.”

Noting that Oregon has set the bar for fish consumption rates, McLerran said he would favor a regional approach, but noted that other Northwest states and Alaska present “much more of a different political lift.”

For more information, see CBB, Oct. 21, 2011, “EPA Approves Toughened Oregon Water Quality Standards Based On Higher ‘Fish Consumption Rate’”

<http://www.cbbulletin.com/413443.aspx>

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